

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:10cr485
	.	
vs.	.	Alexandria, Virginia
	.	May 11, 2015
JEFFREY ALEXANDER STERLING,	.	1:55 p.m.
	.	
Defendant.	.	
	.	
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TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	JAMES L. TRUMP, AUSA DENNIS M. FITZPATRICK, AUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314 and ERIC G. OLSHAN, Deputy Chief Public Integrity Section of the Criminal Division United States Department of Justice 1400 New York Avenue, N.W. Suite 12100 Washington, D.C. 20005
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FOR THE DEFENDANT:	EDWARD B. MAC MAHON, JR., ESQ. Law Office of Edward B. MacMahon, Jr. 107 East Washington Street P.O. Box 25 Middleburg, VA 20118 and BARRY J. POLLACK, ESQ. Miller & Chevalier Chartered 655 - 15th Street, N.W. Suite 900 Washington, D.C. 20005-5701
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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES: (Cont'd.)

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1 P R O C E E D I N G S

2 (Defendant present.)

3 THE CLERK: Criminal Case 10-485, United States of
4 America v. Jeffrey Alexander Sterling. Will counsel please
5 note their appearances for the record.

6 MR. TRUMP: Good afternoon, Your Honor. Jim Trump on
7 behalf of the United States.

8 MR. OLSHAN: Eric Olshan for the United States. Good
9 afternoon, Your Honor.

10 MR. FITZPATRICK: And Dennis Fitzpatrick for the
11 United States. Good afternoon.

12 THE COURT: Good afternoon.

13 MR. MAC MAHON: Good afternoon, Your Honor. Edward
14 MacMahon for Mr. Sterling.

15 MR. POLLACK: Good afternoon, Your Honor. Barry
16 Pollack for Mr. Sterling.

17 THE COURT: All right. And the defendant is in
18 court.

19 All right, this matter is before the Court on
20 posttrial motions that are not yet resolved as well as the
21 sentencing of the defendant if those motions are not granted.
22 Mr. MacMahon, I'm addressing you, but obviously, if Mr. Pollack
23 is the attorney to respond, then he'll just stand up and
24 respond. There are three motions by my understanding that are
25 under consideration: your motion for reconsideration based on

1 the theory of selective position, correct?

2 MR. MAC MAHON: Yes, Your Honor.

3 THE COURT: As well as a motion for acquittal on
4 Count 9, that's a stand-alone motion; and there's a separate
5 motion for acquittal on all counts, correct?

6 MR. MAC MAHON: Yes, Your Honor, that's correct.

7 THE COURT: All right. Now, you've written an
8 extensive brief. The government has responded to it. You've
9 done a reply brief. I will tell you, frankly, I think the
10 government's response was thorough and accurate, and I
11 understand your argument about venue, but again, the *Ebersole*
12 case, I feel, fully supports the instruction which the Court
13 gave, but are there any additional issues you want to raise or
14 any particular issue in the government's response that you want
15 to take issue with?

16 MR. MAC MAHON: No, Your Honor. We'll rest on the
17 pleadings. I know the Court reads them carefully.

18 THE COURT: I have. And as I said, you know, I
19 certainly agree with you, this case was almost entirely based
20 on circumstantial evidence, but this wasn't mere circumstantial
21 evidence. I think the circumstantial evidence in this case
22 was, in fact, overwhelming and compelling.

23 I mean, I'll just mention now orally one or two
24 points. Obviously, there'll be a written opinion coming out
25 hopefully within a few days, but the, one of the critical

1 issues in this case, frankly, was there were only four people
2 at that San Francisco meeting: Mr. and Mrs. Merlin, the
3 defendant, and one other agent, just four, and information
4 about that meeting and the visit to the Sonoma Valley appears
5 in the book, so the only logical inference that any trier of
6 fact could make from that is that one of those four people was
7 the source of that particular piece of information in the book.

8 And at trial, the jury heard from Mr. and Mrs. Merlin
9 as well as from that agent. They denied being the source.
10 There was also absolutely no evidence that any of them had any
11 motive.

12 The logical inference from all that evidence was that
13 Mr. Sterling, who was the other person there and who did have a
14 motive, was the source, and that's just one example of the very
15 powerful circumstantial evidence which the government had in
16 this case.

17 So I recognize your argument, and obviously, in a
18 perfect world, you'd only have direct evidence, but many times
19 that's not the case in a criminal case. And the jury was made
20 up of 12 carefully selected people. They were a good jury.
21 They were attentive. You may recall I don't think we ever had
22 a morning when they came late, and that was their unanimous
23 decision.

24 So I'm satisfied that both the motion under Rule 29
25 and Rule 33 should not be granted, and I'm going to deny your

1 motion.

2 In the issue of selective prosecution, that's always
3 a troubling one, and you raise some interesting comparators,
4 but the government has come back and has been able to
5 articulate the various reasons why, for example, in the
6 *Petraeus* case, he was offered the opportunity to plead to a
7 misdemeanor. In the -- in other cases, there have been
8 misdemeanors. There was a misdemeanor in the NSA case over in
9 Maryland, the *Drake* case.

10 These cases are very difficult for both the defense
11 but also for the government. They have to weigh each case on
12 its own individual merits, among which can be the nature of the
13 information involved, how much has to be disclosed if the case
14 goes to trial, and those other factors, and I do not find in
15 this case that the defendant's race played any part in the
16 government's decision to prosecute him nor that he was unfairly
17 selected, so I'm denying the motion for -- to dismiss this case
18 based on selective prosecution.

19 That being the case then, unless there's any other
20 pretrial matter we need to address, I'm going to go ahead with
21 the sentencing. Is there anything else?

22 MR. TRUMP: No, Your Honor.

23 THE COURT: All right. Now, Mr. MacMahon and
24 Mr. Pollack, have you had enough time to -- and to put you at
25 ease, the guidelines are too high, all right? So I don't need

1 to hear a whole lot of argument about how the guidelines are
2 calculated. We'll leave them as they are, but the Probation
3 Office has recommended a significant variance, even the
4 government has not asked for a guideline sentencing in this
5 case, and the Court is certainly not going to give a 235-month
6 sentence in this case.

7 But the guidelines as calculated here come out to an
8 offense level of 38. The defense has a criminal history of I.
9 The advisory guideline range is 235 to 293 months. There's a
10 one- to three-year period of supervised release. The fine
11 range is 25,000 to 250,000 dollars, and since there are nine
12 counts of conviction, there would be \$900 in special
13 assessments, all right?

14 Then, Mr. Trump, who's arguing this for the
15 government?

16 MR. TRUMP: I am, Your Honor.

17 THE COURT: All right.

18 MR. TRUMP: I wasn't aware that the Probation Office
19 was advocating for a variance.

20 THE COURT: You normally don't know it, but I'm
21 saying it at this time.

22 MR. TRUMP: I don't know what that, that variance is,
23 so be that as it may.

24 Your Honor, our pleadings tried to provide context,
25 context for how the guidelines and 3553 factors relate to what

1 was proved at trial, because now we have a trial record. We
2 don't have to speculate. We don't have to guess. We don't
3 have to debate the merits of what the defendant did. The jury
4 has spoken and spoken quite loudly in fact.

5 In terms of the seriousness of the offense and how it
6 relates to the 3553 factors and the harm caused by the
7 defendant, Judge, the jury was required to find unanimously
8 that the information disclosed was, in fact, national defense
9 information and the disclosure was potentially damaging to the
10 United States, and that the jury got right because the evidence
11 at trial clearly established that this was no ordinary
12 intelligence program.

13 This was not a rogue operation. This was not
14 something for which there was any, any government abuse,
15 government fraud. There was nothing there of any, any type of
16 whistleblower effect.

17 It was meticulously planned. It involved the
18 cooperative efforts of the CIA and the National Laboratories.
19 It involved a team of the country's foremost nuclear experts.
20 It took years to develop, millions of dollars were spent, and
21 it wasn't launched until it was reviewed and vetted at the
22 highest level of the government, and its focus, its focus was
23 the proliferation of nuclear weapons, and that, Your Honor, was
24 and is a big deal.

25 Again, what was proved at trial was that one of the

1 greatest threats to the security of our country is posed by the
2 proliferation of nuclear weapons, weapons of mass destruction,
3 and one of the CIA's most important missions, critical missions
4 is the gathering of intelligence about and, if possible, the
5 thwarting, the thwarting of the development of such weapons.

6 For a long time, the Intelligence Community resources
7 in this regard were directed at a very few number of countries,
8 for example, the Soviet Union and China. By comparison, today
9 there are dozens of countries together with transnational
10 organizations, terrorist organizations, and proliferation
11 networks who aspire to acquire and develop and possibly use
12 nuclear weapons.

13 Iran remains a nuclear threat. Historically, Iran
14 has been openly hostile to the United States and its allies.
15 It's been a supporter of terrorism and terrorist organizations.
16 The need for any additional information about Iran's nuclear
17 weapons program and its intentions has been and remains
18 extremely important to the United States. That was true back
19 in the late 1990s, when this program was developed; it was true
20 in 1999 and 2000, when the defendant was part of this operation
21 and worked on this program; and it was true in 2003, when the
22 disclosures were made to James Risen; and it was true during
23 the period 2003-2006, when the defendant continued to
24 communicate with Risen over the publication of *State of War*;
25 and it's true today.

1 And the defendant, of course, knew all of this. He
2 was trained as a CIA case officer. He was an Iranian expert.
3 He served on the Iran task force. He worked at the
4 Counterproliferation Division. He obviously was familiar with
5 the operation. He was familiar with the history of the
6 operation, how it was developed, the resources and the time and
7 the effort that was spent on the operation. Indeed, part of
8 his employment complaints about his management in New York is
9 that he wasn't given enough credit for his role in this
10 operation.

11 Simply put, we cannot overstate the significance of
12 Classified Program No. 1 as it was described at trial. It was
13 that important. As Dr. Rice explained, there are only a finite
14 number of ways to penetrate and gain intelligence information
15 from our adversaries in an effort to stop the proliferation of
16 nuclear weapons and weapons technology.

17 Having to abandon this operation, having to abandon
18 Merlin, that hurt. It was a substantial and costly blow to our
19 intelligence efforts involving Iran and other rogue states.
20 That was true then and it remains true today.

21 Of course, we will never know what would have
22 happened had Merlin reestablished contact with the Iranians
23 back in 2003. As Robert S. testified, that was in the works
24 when Bill Harlow got his call from James Risen about the story
25 that he wanted to publish in March and April of 2003, and we

1 won't know what else Merlin could have done for the CIA.

2 Again, Robert S. testified that the publication of *State of War*
3 in early 2006 caused the CIA to cease all operational use of
4 Merlin.

5 He was a unique asset. His skill set was very, very
6 valuable, and most significantly, he could be trusted, but the
7 agency determined at that time that it could not go forward
8 with any of their plans because the risk to his safety was far
9 too great following publication of Risen's book.

10 And let me talk about Merlin for a minute, Your
11 Honor. We refer to him as a human asset. He's a real person.
12 He has a wife. He has children, grandchildren. He was someone
13 who was recruited by the CIA to do something that no one else
14 could. He was told by his case officers: Your identity is
15 safe with us. Your association with the CIA is safe as well.
16 No one will ever know what you did for the CIA.

17 In fact, in a run-up to the Vienna operation, at one
18 of the defendant's meetings with Merlin in New York, Merlin
19 asked: Will my identity and association with the CIA ever
20 become public?

21 And this defendant sat face to face with Merlin and
22 assured him: No, it will never, ever become public.

23 Based on those assurances, he went to Vienna. He
24 knew he could be arrested, he could be kidnapped, he could be
25 interrogated by the Iranians, but he did what he was told to

1 do. He performed the mission as directed. He delivered the
2 fire set plans as he was instructed to do.

3 Gathering intelligence, the CIA depends on
4 information collected with the assistance of people like
5 Merlin. It is critical to their mission, and the relationship
6 between, between the CIA and its assets such as Merlin depends
7 on absolute certain secrecy.

8 The asset works closely with a case officer, and the
9 most important -- and again, this came out at trial through a
10 number of witnesses -- the most important function of any case
11 officer is maintaining the secrecy of the identity of his or
12 her human sources and their relationship with the CIA.

13 The defendant broke that promise. He violated the
14 most basic, most fundamental, most important duty of a case
15 officer. That the KGB or the Iranians or anyone else has not
16 yet retaliated against Merlin doesn't serve to mitigate the
17 defendant's conduct. What he did was unconscionable. He put
18 Merlin in danger, his family in danger, and for what? Because
19 the CIA would not settle his claims against the agency.

20 Merlin, of course, was quite upset with the
21 publication of the books in 2006, and after the trial, he
22 wanted to provide the probation officer or the Court with a
23 statement as to how this case had affected him and his family,
24 but when he read about the case and he saw how he was
25 characterized in the trial as a greedy, perhaps racist,

1 bumbling Russian scientist, he just had enough. He wanted
2 nothing more to do with this process.

3 Merlin came to the United States with his family not
4 as a defector, not as someone wanting to help the CIA, but to
5 provide his family with a better life. He and his wife both
6 became United States citizens on their own, without help from
7 the CIA. They were proud of their new country, proud of what
8 they were able to do, and proud that they were able to do
9 something noble for the United States.

10 The defendant, of course, wants the Court to consider
11 the time he has spent on bond preparing for trial, that he was
12 living under a cloud for four years, unable to support his
13 family. Merlin has been living under a cloud for almost a
14 decade, living in fear for himself, for his family. He lost
15 his job working for the CIA.

16 Merlin deserves our thanks. He did not deserve what
17 happened to him as a result of the defendant's crimes, and he,
18 not the defendant, is the only victim here.

19 The context of when, how, and why these disclosures
20 were made also demonstrates the egregiousness of the
21 defendant's conduct. When. When the defendant spoke with
22 Risen is significant. In 2003, the defendant had already left
23 the CIA. He spoke with Risen about his knowledge of a program
24 that he worked on back in 2000, but the defendant was aware
25 when he turned Merlin over to the next case officer,

1 Stephen Y., he was aware that the operation was continuing,
2 that it was being planned against other countries as well.

3 In other words, when he sat down with James Risen, at
4 the same time that was occurring, Merlin was engaging with
5 other countries in similar operations. The recklessness of
6 what the defendant did is astounding. He put Merlin at risk.
7 He put case officers at risk. He put the program at risk. It
8 was happening at the time he was sitting down with a reporter.

9 And how? Well, as the trial record again proved,
10 there was nothing amiss about this program. There were no
11 faulty plans. There was no inadvertent transfer of technology
12 to Iran. There was no threat that we were giving away nuclear
13 secrets, but what does the defendant tell Risen?

14 Here is an intelligent, astute, well-trained case
15 officer, who knows the truth about the program, he knows the
16 facts, yet he makes a very deliberate, calculated decision to
17 change some of those facts, and why? The only way he could get
18 the story published, the only way he could create something
19 newsworthy was by characterizing the program in the light that
20 he did.

21 Why? Spite. Vindictiveness. Nothing to do --
22 nothing noble. Nothing doing his duty, going to SSCI. Nothing
23 in the nature of any sort of legitimate complaint. He was
24 angry. He ran out of options. His litigation was running --
25 his litigation settlement claims had been, had been dismissed

1 by the agency, and this was what was left, and he struck back.

2 Your Honor, this was not a fun case. Asking the
3 Court to punish a former public servant, someone who at one
4 time volunteered to serve his country, is not something that
5 makes anyone feel good. Yet there were rewarding aspects of
6 the case. There were moments where it was a pleasure to work
7 on this case, getting to meet and to know some of the case
8 officers, some of the men and women who work at the CIA. It
9 was a fascinating experience, getting to know a little about
10 their lives and how they conduct themselves on a day-to-day
11 basis.

12 We have gone through lots of CIPA hearings. We have
13 dealt with lots of classified material, classified documents.
14 We have filed things under seal ad nauseam. We've had
15 protective orders. We've debated the redactions to particular
16 documents, the substitutions that have to be made, which way is
17 the document better suited for trial, which way should this
18 appear, and at times it's all very technical, very legal, very
19 sterile.

20 But in sitting down with the witnesses in this case,
21 the case officers: Stephen Y., Stephen B., Laurie D., Zach W.,
22 Max, Denis M., Bob S., even the supervisors: Charles Seidel,
23 people like David Shedd and others, dealing with classified
24 information is not a technicality. It's not something they do
25 because they're legally obligated to do it. It's not something

1 that they have to study a CIPA guide to figure out.

2 It is real. It's how they live their lives. It's
3 how they deal with their colleagues, with their friends, with
4 their family. It is engrained in them, it is part of their
5 soul that they do not, they do not question why material was
6 classified or why they are obligated to keep those secrets
7 dear.

8 They have sworn that they will do so. They have
9 sworn that they will protect these secrets with their life
10 because they are life-and-death matters.

11 It is a difficult job. It is a job that few
12 undertake, but it is a job that they do knowing what the
13 consequences are, knowing that they can't talk about these
14 things, they can't talk about them with their friends, with
15 their families, and even when they leave the agency, they are
16 sworn to secrecy. They know that.

17 It's engrained in them, and the idea that one of
18 theirs, one of theirs, the defendant, Jeffrey Sterling, would
19 violate that trust is just unconscionable, and that is why in
20 the end, Judge, he should be sentenced severely because what he
21 did was deliberate, it was calculated, it was designed to
22 thwart an operation that at its core put people at risk, put
23 assets at risk, and for that he should be punished and he
24 should be punished severely.

25 THE COURT: All right. Mr. MacMahon?

1 MR. MAC MAHON: May it please the Court. Your Honor,
2 I don't want to relitigate the case that we already tried,
3 obviously. Mr. Sterling pled not guilty and is not going to
4 allocute to you today that he did these things, and we'll have
5 to deal with that on appeal, I understand.

6 So the prosecutors did a great job trying their case.
7 They won their case. They deserved to call the facts out as
8 they want to, and that's not really what we're doing here
9 today. What we're trying to do today is to figure out what
10 would be a fair sentence for Mr. Sterling given all the facts
11 and circumstances as we deal with them here.

12 And again, I know you read the pleadings that we file
13 very closely, so I'm not going to repeat everything that's in
14 my sentencing memorandum. First of all, I just wanted to say
15 that with respect to the claim that, in the reply that somehow
16 defense counsel was responsible for five years, four-and-a-half
17 years of delay in this case by not agreeing to a continuance at
18 the time that the first trial went sideways, Judge, that was a
19 very serious issue. It was very serious to you at the time. I
20 had a conflict of -- a scheduling conflict. I couldn't give
21 you a continuance. And there were multiple appellate issues
22 that came up anyway.

23 So it is a fact that Mr. Sterling since he was
24 arrested in 2001 has lived under a cloud. He hasn't had a job.
25 He hasn't been able to work, and that's just a fact. And

1 whether it's because Mr. Risen appealed to the Supreme Court or
2 the government appealed the issue about who would know what the
3 jury is may be important to the lawyers involved, but
4 Mr. Sterling is the one whose, whose life has been passing as
5 it goes by.

6 With respect to the issue of harm, no one that tried
7 this case from the very beginning and to the end, and that
8 includes all the lawyers in this room, we all know this is a
9 very serious case. We all appreciate your time on these CIPA
10 issues. Anytime we have CIPA issues in a case, it's very
11 important.

12 So nothing, nothing we've said or written at all in
13 any way is meant to take away from what's obviously a very
14 serious case and a very serious issue, but the record does
15 show, Your Honor, there is peace negotiations, whatever you
16 want to call them, with the Iranians right now. They're going
17 to open an embassy in Washington.

18 And there was a 2007, I believe, intelligence
19 estimate that said they don't even have a nuclear weapons
20 program. So whatever it was that occurred in 2003 or 2005 is
21 water under the bridge at this point in time from a factual
22 standpoint, and again not taking away or anything that would
23 happen, the government never even tried, didn't assume a burden
24 of proving that there was any actual damage done to the United
25 States, and that's why I think it was important for you to read

1 Mr. Manners' letter, which since it was a sentencing issue, in
2 their sentencing memorandum, they said this was the worst leak
3 essentially that had ever occurred or one of them.

4 And again, I'm not, I'm not belittling this. I'm
5 just saying so Mr. Manners reads this, and what does he do? He
6 comes forward with his own description.

7 Aldrich Ames turned in a whole bunch of agents who
8 got killed, and that was before Mr. Sterling supposedly
9 disclosed the name of Merlin. The book --

10 THE COURT: Yeah, but Aldrich Ames also got a life
11 sentence.

12 MR. MAC MAHON: He did, Your Honor. So I'm saying in
13 terms of the claim that everything was going to be -- I'm not
14 comparing -- I'm just saying the claim they can't recruit
15 agents because of this is something that Mr. Manners deals with
16 in his letter.

17 And what did Mr. Manners get out of it? He gets
18 called, someone who retracted his testimony and otherwise, he's
19 obviously saying something that the agency didn't want, but the
20 issue, you can, you can read his letter and determine for
21 yourself the level of damage, and again, it wasn't even an
22 element in the case.

23 I do just very quietly, I mean, quietly is not the
24 right word, but remind you that we had, you know, in dealing
25 with CIA people telling you things of a certain fact and that

1 they're established and that all these terrible things had
2 happened, we had another case where the whole world was
3 watching and they couldn't tell you the truth, and there were
4 no consequences for what happened in that situation, and I only
5 ask you to keep that in mind when you hear what Mr. Manners
6 called the hyperbolic claims of damages that arise from this
7 case as to what they say.

8 Mr. Manners certainly -- I'm sorry, Merlin feels like
9 he was mistreated in this case. We only asked questions that
10 were brought out in the discovery, but Mr. Manners certainly
11 didn't deserve this at all.

12 So it gets me to the end here, Judge, which is where
13 I want to try to tell you about Jeffrey Sterling, and I don't
14 think I can do any better than the letters that you read from
15 all the people that described him as a loving and a caring
16 person and a wonderful person. He's been called a lot of names
17 in this courtroom: a traitor; selfish, I think, five or six
18 times; somebody who turned over -- he's been called a lot of
19 names, but who he is is a person. He's the first person in his
20 family to graduate high school and go to law school, and he
21 did, as Mr. Trump says, volunteer and go and work at the CIA.

22 And this is a very odd sentencing. At least maybe
23 the Court with all your experience has dealt with this before,
24 but if Mr. Sterling was a selfish person in 2003 or an angry
25 person in 2004, that's not who's here today. He's a

1 47-year-old man, and, and it's not somebody that you need to
2 wait and see what's going to happen if you give him a fair
3 sentence in line with what other people convicted of what he
4 has done.

5 I don't know if you've had a defendant come before
6 you who has letters of support from people he worked with at
7 health care fraud investigations, and we've given you
8 commendations he got where he saved our government millions of
9 dollars in health care fraud. He was someone who a judge in --
10 a federal judge called to the, the podium or at least called
11 out in a sentencing to thank him for all the work that he's
12 done.

13 So whoever he was in 2003, he's not that person
14 anymore. He's someone who went to law school, got a job, and
15 started ferreting out health care abuse. He's someone who
16 loves his, his wife. He's someone who has a family and people
17 that love him and support him, and that's who you, that's who
18 you're going to sentence today.

19 And I think you do need to look at the other
20 sentences that other people got. Mr. Trump talked about an
21 agent, a CIA agent turning over the name of somebody. Well,
22 that's what Mr. Kiriakou did. He stood at this very podium,
23 and he got sentenced. Mr. Kim was convicted of discussing with
24 a reporter issues of the Korean nuclear weapons program.

25 Every case is different; I understand that. That's

1 why we haven't -- I don't stand here telling you -- you have
2 the job of figuring out what the sentence is here. None of us
3 can do that job for you, but all we ask is that you be fair,
4 and I know you will be, and sentence Jeffrey Sterling for the
5 man that he is today, and just please be fair to him, Your
6 Honor. That's all.

7 THE COURT: All right, Mr. Sterling, come up to the
8 lectern.

9 First of all, just for the record, are there any
10 victims who want to be heard?

11 (No response.)

12 THE COURT: All right, Mr. Sterling, this is your
13 opportunity to say anything you'd like the Court to consider.
14 I have read all the letters that were submitted on your behalf
15 by counsel, but you may very well want to say something as
16 well.

17 THE DEFENDANT: Very briefly, Your Honor. I would
18 like to thank the Court for the respect -- the Court and the
19 staff for the respect that you have shown me and the courtesies
20 that you've shown me through the years. I would especially
21 like to thank Mr. Wood, who has been very gracious and very
22 courteous to me and my loving wife, Holly.

23 And I would also finally like to thank Your Honor for
24 delaying the start of the trial so I was able to attend my
25 brother's funeral. He was a Marine and proudly served his

1 country, and it meant a lot to me to be able to say goodbye to
2 him.

3 And that's all. Thank you very much.

4 THE COURT: All right. Well, Mr. Trump, to
5 paraphrase something you said about being a CIA agent is a
6 difficult job, being a federal judge is also a very difficult
7 job, and there's nothing more difficult than having to sentence
8 in a case like this because clearly, Mr. Sterling, you should
9 get a lot of credit in terms of your total life, and 3553(a) of
10 Title 18 of the United States Code gives the Court the
11 authority, in fact, the obligation to make sure that in any
12 sentencing, we consider the multiple factors, not just the
13 crime that was committed, although that is clearly a factor and
14 an important one.

15 But the Court has to look at the entire person who
16 stands before the Court when we go to sentence someone, and you
17 do get a lot of credit in the Court's eyes for coming from the
18 background you came from, working your way through school,
19 getting a law degree, and volunteering to work at the CIA. All
20 that was highly commendable.

21 And what's happened since you left the CIA, I do also
22 feel that your work for Blue Cross was outstanding and showed
23 that you have a lot of talent and the ability to live a
24 law-abiding life.

25 But these years at the CIA, especially the ones at

1 issue in this case, are obviously a terrible part of your life.
2 It's a part that you're going to have to deal with. This Court
3 takes very seriously the obligations of people who have trust
4 of the kind that you had, especially when you're working with
5 human assets.

6 Since you've mentioned the *Kiriakou* case,
7 Mr. MacMahon, you may recall that I accepted that plea under a
8 binding plea agreement, but I also said during that sentencing
9 that I was troubled by the fact that the identity of an agent
10 was disclosed, and had I not agreed -- and I did agree for the
11 various reasons that we often have in these types of cases
12 where you're balancing the disclosure problems that the
13 government has against being able to have the case go
14 forward -- I would have probably sentenced him higher, because
15 there is in my view no more critical secret than the secret of
16 those people who are working on behalf of the United States
17 government in covert capacities, even more than the program
18 itself.

19 Regardless of the merits of that program, there's no
20 question that Merlin was a human asset and that the information
21 in that book put him in a highly compromised position, and that
22 is to me the most serious element of this entire case, and that
23 is, of course, another reason why the Court has to impose a
24 sentence that addresses not just your conduct, because I don't
25 think there's any danger, Mr. Sterling, that you're going to

1 recidivate, that you're going to do this type of thing again,
2 but there has to be a clear message sent to other people at the
3 agency or in any other kind of clandestine or sensitive or
4 secret operation of the government that when you take an oath
5 in which you promise that you will not reveal secrets, that if
6 you do knowingly reveal those secrets, there's going to be a
7 price to be paid.

8 Now, the government talked about how essential it is
9 to the national security that we have people willing to serve
10 as human assets and that we have secrets preserved, and that's
11 true, but it's equally if not more essential to the security of
12 the nation that we have a justice system that's fair so that it
13 will have the respect of the people, and that means that the
14 courts have to always balance these various issues.

15 I've looked very carefully at this case. I am
16 satisfied that a sentence higher than that given to
17 Mr. Kiriakou is appropriate in this case and in part because,
18 as the government did correctly point out, this is different in
19 that Kiriakou did come forward and admit his guilt. That has
20 not happened in this case.

21 Now, that doesn't mean a person is punished severely
22 because he uses his right to go to trial, but from a sentencing
23 standpoint, it does suggest that you have two different
24 defendants, one who has come to grips with the fact that he did
25 wrong, recognizes it, and is ready to move on with his life,

1 and the second person, who for whatever reason does not believe
2 he committed any crime, and that means, in my view, that there
3 is a difference between these two cases. I think, however,
4 that not that great a difference is appropriate.

5 The final sentence of the Court, considering the
6 3553(a) factors, is the defendant be committed to the custody
7 of the Bureau of Prisons for a period of 42 months on each of
8 Counts 1, 2, 3, 4, 5, 6, 7, 9, and 10, all concurrent with each
9 other, followed by two years of supervised release, and the
10 terms and conditions of supervision, Mr. Sterling, are first of
11 all your uniform good behavior, which means you're not to
12 violate any federal, state, or local laws.

13 Do you understand that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Secondly, you are not to -- I'm sorry,
16 you are required to follow all the conditions of supervision as
17 explained to you by the Probation Office, and they'll also be
18 included on the judgment order. Do you understand that?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: The only special condition I'm imposing
21 in this case is you are required to get a complete mental
22 health evaluation. You are required to take any medications
23 prescribed by your mental health practitioner and fully
24 participate in such in- or outpatient mental health treatment
25 as directed by the Probation Office.

1 Do you understand that?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: You will have to waive any privacy rights
4 you have to the mental health treatment so that Probation can
5 monitor your progress. Do you understand that?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: I'm going to waive the costs of that
8 program. I am also waiving the costs of supervision, any other
9 costs of supervision, the costs of incarceration, and any of
10 the statutory fines. I don't think you have the financial
11 resources to cover those at this point.

12 There is no history of drug abuse, so the mandatory
13 drug testing is not imposed. However, the Probation Office can
14 demand a drug test from you at any time, and you must comply.
15 Do you understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Lastly, because there are nine counts of
18 conviction, there's a total of \$900 in special assessments.

19 Now, there was a forfeiture provision in the
20 indictment, and I can't recall what we finally did with the
21 forfeiture. Is there any forfeiture in this case?

22 MR. TRUMP: We have not pursued the forfeiture issue.

23 THE COURT: All right, I just wanted to make sure for
24 the record.

25 And I'm assuming that the government has no objection

1 to the defendant being allowed to self-surrender? There have
2 been no problems at all on bond, and this is a nonviolent
3 offense.

4 MR. TRUMP: We would not object to self-surrender
5 once space became available at whatever institution the
6 defendant recommends or the Bureau of Prisons decides.

7 THE COURT: All right. Now, Mr. MacMahon, I don't
8 think in your papers -- and if you had it, I must have missed
9 it -- did you make a recommendation to a facility? I'm
10 assuming you want it near Missouri?

11 MR. MAC MAHON: Yes, Your Honor, near where his wife
12 lives, St. Louis, Missouri.

13 THE COURT: All right, we'll make that
14 recommendation.

15 MR. MAC MAHON: If I may, Your Honor?

16 THE COURT: Yes, sir.

17 MR. MAC MAHON: There is some -- in the pre-sentence
18 report, which is obviously filed with you under seal, there's
19 some specific medication, and I just would ask that the Court,
20 if you're willing to put in the order that they consider,
21 however that can be -- I know you don't want to tell BOP what
22 to do in the prison in terms of medication, but the doctors
23 have suggested those specific medicines for him.

24 THE COURT: That's something that you and Ms. Riffle
25 should talk about, the Probation Office. You're going to have

1 time, at least a few weeks, before the defendant has to
2 self-surrender in which you should be able to make those
3 arrangements. I think those two medications are standard. If
4 they're formulary or they're funny, sometimes the Bureau of
5 Prisons has trouble with some of those, but if you find in
6 talking with Ms. Riffle and the BOP that there are going to be
7 issues about that, you can approach the Court with a motion,
8 and we'll see if we can help you out on that.

9 MR. MAC MAHON: Thank you, Your Honor.

10 THE COURT: All right? So I'm not going to put it in
11 the judgment order per se.

12 We will recommend a designation to a facility as
13 close to St. Louis, Missouri, as possible.

14 Mr. Sterling, I want to advise you you have a right
15 to appeal both the convictions and this sentence. If you wish
16 to file an appeal, you have to file the notice of appeal within
17 14 days of today's date. I will -- you have a right to be
18 represented by counsel through that appeal. If you are unable
19 to afford to hire counsel yourself, we will appoint counsel for
20 you.

21 Do you understand that?

22 THE DEFENDANT: Yes, I do, Your Honor.

23 THE COURT: All right, is there anything further?

24 MR. MAC MAHON: Not for the defense, Your Honor.

25 THE COURT: All right. Then the last thing,

1 Mr. Sterling, is I am going to continue you on your current
2 bond. The terms and conditions are all the same, with the
3 additional condition that when you are notified by the Marshals
4 Service as to where and when to report to start serving your
5 sentence, you must get yourself there.

6 Do you understand that?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: All right. Mr. Trump, was there anything
9 else?

10 MR. TRUMP: Yes, Judge. With respect to any issues
11 that may arise on appeal, if the Court is inclined, we would
12 ask the Court to make the record as to whether the sentence
13 would be the same regardless of the number of counts; in other
14 words, would the Court have imposed the same sentence
15 regardless of nine counts versus three?

16 THE COURT: I've imposed the sentence on each count
17 concurrent because I believe that that is the appropriate
18 sentence as to each count.

19 MR. TRUMP: I guess our question is would the Court
20 find that, that that would be the sentence regardless of the
21 number of counts?

22 THE COURT: If there had been one or nine, it
23 would --

24 MR. TRUMP: Yes.

25 THE COURT: The only -- yes. They're all the same.

1 I mean, the only count that really is a little bit different is
2 the obstruction count because that's sort of after the fact,
3 but, of course, ironically, that had the highest exposure.
4 That had a twenty-year exposure. I think all the others had a
5 ten-year exposure.

6 All the other counts have the same core problem, that
7 is, that Merlin's identity was exposed and there was a clear
8 breach of the obligation to keep things secret.

9 In terms of the obstruction count, that's an
10 obstruction of justice. That's in some respects, you know, has
11 its own problems. So I'm comfortable in putting on the record
12 that the sentence would have been the same were it a conviction
13 of one count or of all of those counts.

14 MR. TRUMP: The second thing is an administrative
15 matter, and I'm not trying to signal to the Court any intention
16 on the part of the government, but because of the different
17 multiple layers of review in this case, we have to object to
18 the sentence or else any appellate issue related to sentence
19 could be waived, so we just want to put on the record that,
20 note our objection.

21 THE COURT: That's your job, Mr. Trump.

22 MR. TRUMP: Thank you.

23 THE COURT: I understand that.

24 MR. MAC MAHON: I'll jump in and object to the
25 advisory opinion on the first question about the consecutive --

1 the sentence on all charges.

2 THE COURT: Well, look, as long as we're doing this,
3 to save us another hearing on this, if the defendant -- if
4 there is an appeal, is there going to be any motion to stay
5 execution of sentence?

6 MR. MAC MAHON: Well, Your Honor, I'm not, I'm not
7 sure as of today if there's going to be, but it wouldn't affect
8 the motion for bail pending appeal, I wouldn't think. I
9 haven't had a chance to consult with my client about that.

10 THE COURT: All right, that's fine.

11 MR. MAC MAHON: So I can't answer that.

12 THE COURT: Well, maybe you and the government can
13 talk as well and see what you can work out.

14 MR. MAC MAHON: We will, Your Honor.

15 THE COURT: All right, very good.

16 When you leave court today, Ms. Riffle is in the
17 courtroom. You should make sure you've checked in with
18 Probation and Pretrial so that also the folks in Missouri know
19 that the pretrial bond will stay in place until the defendant
20 self-surrenders if there's no stay of the execution.

21 MR. MAC MAHON: We'll do that, Your Honor.

22 THE COURT: All right, if there's nothing further
23 then, we'll recess court for the day.

24 MR. TRUMP: Thank you, Your Honor.

25 MR. POLLACK: Thank you, Your Honor.

1 (Which were all the proceedings
2 had at this time.)

3

4 CERTIFICATE OF THE REPORTER

5 I certify that the foregoing is a correct transcript of
6 the record of proceedings in the above-entitled matter.

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/s/
Anneliese J. Thomson